vss

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.3719 OF 2004

M/s.Suniti Plastic Moulders & Ors. ... Petitioners

V/s.

Jethabhai R. Patel & Ors. ... Respondents

Mr.V.A. Thorat i/b Mr.I.R. Kulkarni and Mr.D.S. Joshi for Petitioners
Mr.Y.S. Jahagirdar i/b G.S. Godbole for Respondents

CORAM: **SMT.NISHITA MHATRE, J.**

DATED: **SEPTEMBER 28, 2005**

P.C.:

. This Petition challenges the two concurrent findings of fact of the Courts below. The Courts have held that the suit should be decreed on the grounds of permanent alterations and subletting.

2. The suit was filed by one Jethabai, plaintiff No.1 and National Industries Company. Jethabai expired in 1989. A probate of the will was obtained in 1990. Shantilal, who is the son of Jethabai and the executor of Jethabai's estate was impleaded as the plaintiff in place of his father. The suit which was filed in 1970 was then prosecuted by Shantilal and National Industries Company. The National Industries Company became the sole proprietorship of one Mrs.Tara G. Patel.

3. The submission of the learned Counsel for the Petitioners is that the suit ought to have been dismissed on account of non-joinder of necessary parties. He submits that Jethabai's grandsons were the sole beneficiaries under the will and, therefore, they ought to have been joined as parties to the suit. He points out that after the will was probated, section 216 of the Indian Succession Act does not permit the executor to prosecute claims on behalf of the deceased; it is for the beneficiaries to do so. Furthermore, Tara G.Patel ought to have been joined since she was now the sole proprietor of National Industries Co., Plaintiff No.2.

4. To counter these arguments, the learned Counsel for the respondents, points out that the landlord as defined under section 5(3) of the Bombay Rent Act includes several persons and, therefore, according to him, Shantilal to whom admittedly the Petitioners were paying rent can be considered to be the rent collector.

5. In my view, section 5(3) of the Bombay Rent Act is wide enough to allow the prosecution of the suit filed by the deceased by his son Shantilal. The

definition includes any person for the benefit of whom he receives rent. In the present case, Shantilal was receiving rent for the beneficiaries of Jethabai's estate under his will. Therefore, it cannot be said that the suit filed was bad and should not succeed for non-joinder of necessary parties. Both the Courts below have considered the submission made on behalf of the Respondents and have rightly held that the suit was maintainable.

6. The next contention raised on behalf of the Petitioners is that the ground of permanent alterations in the suit premises has not been made out. It is submitted by the learned Counsel that the loft in question was in existence prior to the Petitioners becoming tenants of the suit premises. It is also submitted that there are documents on record to show that the loft was in existence prior to the institution of the suit. It is also submitted that the loft was erected with the prior permission of the landlord.

7. Both the Courts have considered this and have found that the loft was constructed after 1956. The notices issued by the Bombay Municipal Corporation have been produced on record which indicate that the loft came into existence in 1956. There is no evidence to

show that such a loft was permitted to be erected by the landlord. In fact both the Municipal Corporation and the landlord were consistently agitating against the construction of the loft. Therefore, this submission made on behalf of the Petitioners cannot be accepted.

8. Furthermore, the submission regarding subletting is without any merit. The premises were let out in 1956 to the Petitioners and admittedly the Petitioners sublet the same to Respondent No.2 who in turn has sublet the suit premises. The findings of the trial Court and appellate Court cannot be faulted. There is no reason to interfere with the orders of the Courts below. Petition rejected.

9. At the request of the learned Counsel for the Petitioners, time to vacate the suit premises is granted for a period of eight weeks from today on condition that the Petitioners furnish an undertaking in the usual terms within two weeks from today.